



Original Attachment

CAMBRIDGE LICENSE COMMISSION
CITY OF CAMBRIDGE

831 MASSACHUSETTS AVE., 1ST FLOOR, CAMBRIDGE, MASSACHUSETTS 02139 • TEL (617) 349-6140 • FAX (617) 349-6148

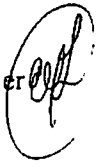
RICHARD V. SCALI
Chairman

CHIEF GERALD R. REARDON
Fire Department
Commission Member

CAPTAIN HENRY W. BREEN
Police Department
Commission Member

ELIZABETH Y. LINT
Executive Officer

TO: Robert W. Healy, City Manager

FROM: Elizabeth Y. Lint, Executive Officer 

DATE: September 21, 2006

RE: Jitney License Application
Nautical Tours, Inc.

Please be advised that the License Commission has voted 3-0 to recommend denial to you for City Council consideration.

The recommendation of denial is for the following reasons:

- 1) There is a lack of public support for this application. In fact, the License Commission received 15 e-mails opposing the application, and 4 people testified at the hearing in opposition to the application;
- 2) There is no need for an additional tour company to be operating in Cambridge. There are already four (4) other trolley tours that operate in the City that make stops throughout the City, offering tourists the opportunity to shop and visit area attractions;
- 3) There are traffic concerns, particularly in the area of Harvard Square where there is already serious congestion;
- 4) There is no written emergency plan;
- 5) There is no clear operating plan;
- 6) There is no benefit to the citizens of Cambridge as the only stop is in Kendall Square, where the tour begins. There is no opportunity for tourists to disembark at any location in the City.

We recommend that you forward this to the City Council for denial at their September 25, 2006 meeting.

Please advise if you require further information.

cc: Margaret Drury, City Clerk; Maryellen Carvello



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September 21, 2006

CAPTAIN HENRY W. BREEN
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ELIZABETH Y. LINT
Executive Officer

Erroll Tyler
Nautical Tours, Inc.
296 Main Street, Suite 1E
Melrose, MA 02176

RE: Application for Jitney License
Hearings held on September 12, 2006 &
September 20, 2006
Nautical Tours, Inc.

Dear Mr. Tyler:

The License Commission has voted 3-0 to recommend denial to the City Manager for City Council consideration, on your application for a Jitney license in the City of Cambridge for two amphibious vehicles.

The recommendation of denial is for the following reasons:

- 1) There is a lack of public support for this application. In fact, the License Commission received 15 e-mails opposing the application, and 4 people testified at the hearing in opposition to the application;
- 2) There is no need for an additional tour company to be operating in Cambridge. There are already four (4) other trolley tours that operate in the City that make stops throughout the City, offering tourists the opportunity to shop and visit area attractions;
- 3) There are traffic concerns, particularly in the area of Harvard Square where there is already serious congestion;
- 4) There is no written emergency plan;
- 5) There is no clear operating plan;
- 6) There is no benefit to the citizens of Cambridge as the only stop is in Kendall Square, where the tour begins. There is no opportunity for tourists to disembark at any location in the City.

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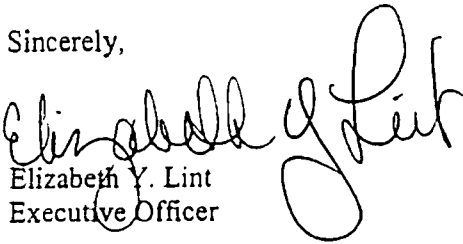
September 21, 2006

Page 2

Nautical Tours, Inc.

Your application will be forwarded to the City Manager for presentation to the City Council on Monday, September 25, 2006. If you need further information, please contact the City Clerk at (617) 349-4260.

Sincerely,


Elizabeth Y. Lint
Executive Officer

cc: Richard V. Scali, Chairman; Chief Gerald Reardon; Ret. Cap. Henry Breen; Dep. Chief Dan Turner; Robert W. Healy; Margaret Drury; Jeff Rowes, Esq.; Jinny Nathans; Pebble Gifford; Lawrence Adkins; Margaret McMahon; Sarah Smith



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Commission Member

ELIZABETH Y. LINT
Executive Officer

To: Robert W. Healy, City Manager; Margaret Drury, City Clerk;
Don Drisdell, City Solicitor
From: Elizabeth Y. Lint *EYL*
RE: Nautical Tours DTE Appeal
Date: June 7, 2007

2007 JUN -7 A 11:21
OFFICE OF THE CITY CLERK
CAMBRIDGE, MASSACHUSETTS

Attached please find a copy of the decision regarding Nautical Tours appeal from the denial of their petition to operate in the City. The DTE has granted their appeal.



The Commonwealth of Massachusetts

DEPARTMENT OF PUBLIC UTILITIES

OFFICE OF THE CITY CLERK
CAMBRIDGE, MASSACHUSETTS

2007 JUN - 7 A 11: 21

D.T.E./D.P.U. 06-87

June 1, 2007

Petition of Nautical Tours, Inc. of Melrose, Massachusetts, requesting that the Department of Public Utilities (1) act as the licensing authority and issue it a municipal street license for a specified route in the City of Cambridge, Massachusetts, pursuant to G.L. c. 159A, § 1; (2) issue it a certificate of public convenience and necessity for the operation of amphibious motor vehicles for hire to provide sightseeing service over certain public ways in the cities of Cambridge and Boston, Massachusetts and under the jurisdiction of the Department of Conservation and Recreation, pursuant to G.L. c. 159A, § 7; and (3) issue it a certificate of compliance for charter service within the Commonwealth, pursuant to G.L. c. 159A, § 11A.

APPEARANCES: Jeff Rowes, Esq.
Institute for Justice
901 N. Glebe Road, Suite 900
Arlington VA 22203

-and-

Wystan M. Ackerman, Esq.
Robinson & Cole, LLP
280 Trumbull Street
Hartford CT 06103-3597
FOR: NAUTICAL TOURS, INC.
Petitioner

I. INTRODUCTION

On September 29, 2006, Nautical Tours, Inc. (“Nautical Tours” or “Company”) filed a petition with the Department of Public Utilities (“Department”), formerly the Department of Telecommunications and Energy, relating to the operation of amphibious motor vehicles for sightseeing purposes over certain public ways in the cities of Boston (“Boston”) and Cambridge (“Cambridge”), Massachusetts, and ways subject to the jurisdiction of the Department of Conservation and Recreation (“DCR”). In its petition, the Company appealed the denial of a municipal street license (“License”) by the Cambridge City Council pursuant to G.L. c. 159A, § 1, and asked that the Department act as the licensing authority and issue it a License for a specified route in Cambridge. In addition, Nautical Tours asked that the Department issue it a certificate of public convenience and necessity (“CPCN”) for the operation of amphibious motor vehicles over certain public ways in Boston and Cambridge and ways subject to the jurisdiction of DCR pursuant to G.L. c. 159A, § 7. During the course of the proceeding, Nautical Tours confirmed that, in addition to sightseeing tours, it intends to conduct charter tours and, thus, also seeks a certificate of compliance for charter service (“Certificate”) within the Commonwealth pursuant to G.L. c. 159A, § 11A (Exh. DTE 1-1).¹

¹ Pursuant to 49 U.S.C. § 14501, a state may not enact or enforce any law, rule, regulation, standard, or other provision having the force and effect of law relating to the authority to provide intrastate or interstate charter bus transportation. However, 49 U.S.C. § 14501 does not restrict the safety regulatory authority of a state with respect to motor vehicles or the authority of a state to regulate carriers with regard to minimum amounts of financial responsibility relating to insurance requirements.

Because a License request, a CPCN request, and a Certificate request involve common questions of law and fact, the Department, pursuant to 220 C.M.R. § 1.09, accepted the Company's requests as one petition. See Boston Duck Tours, D.P.U. 93-213 (1994); Braintree Best Taxi, Inc., D.P.U. 91-203/209 (1992); Vincent A. Irvin, Jr., d/b/a My Bus Company, D.P.U. 91-73/81 (1991). The Company's petition was docketed as D.T.E./D.P.U. 06-87.

The Department held a public hearing on this matter on January 10, 2007. There were no intervenors. In lieu of an evidentiary hearing, on March 21, 2007, Nautical Tours submitted sworn pre-filed testimony.² The Company submitted a brief on March 21, 2007. The evidentiary record consists of 25 responses to information requests.³

II. STANDARD OF REVIEW

General Laws c. 159A, § 7, provides that the Department may issue a CPCN if it finds, after notice and hearing, that public convenience and necessity require the proposed service,

² Affidavits were submitted by: (1) Peter Beesley, manager of marine safety and mechanical services for Nautical Tours; (2) Clarence Jones, retired J.P. Morgan Chase executive who will serve as general financial advisor to Nautical Tours; (3) Robert Rolando, former owner and operator of an amphibious vehicle tour service in Providence, Rhode Island, who will serve as an expert consultant to Nautical Tours; (4) Scott Solombrino, owner and president of Dave-El Chauffeured Transportation Network; (5) Allena Tabb-Harper, vice president of Nautical Tours; (6) Erroll Tyler, president and chief executive officer of Nautical Tours; and (7) Joann Tyler, member of the board of directors of Nautical Tours.

³ The Department, on its own motion, moves the Company's responses to information requests DTE 1-1 through DTE 1-17, DTE 1-4 Supp., DTE 1-4 2nd Supp., DTE 1-5 Supp., DTE 2-1 through DTE 2-4, and DTE 2-2 Supp. into the record of this proceeding.

the service is in the public interest, and the petitioner is fit, willing, and able to operate the proposed service properly. Deacon Transportation, Inc. v. Department of Public Utilities, 388 Mass. 390 (1983); Boston-Cambridge Trolley Tours, Inc. d/b/a Boston Trolley Tours, D.P.U. 88-93 (1988); Boston Doubledeckers, Inc., D.P.U. 84-269 (1985). Because motor vehicle service under authority granted by a CPCN operates over a specified route, the granting of the CPCN by the Department is conditioned on the petitioner being the holder of a License issued pursuant to G.L. c. 159A, § 1, which authorizes travel through each municipality and jurisdiction on the petitioner's specified route.

General Laws c. 159A, § 1, provides that if a municipality or jurisdiction has denied an application for a License or has taken no action on the application for the License within 60 days allowed by the statute, the petitioner may appeal to the Department, within five days of the expiration of the 60 days, to act as the licensing authority for the municipality or jurisdiction and to issue the License. General Laws c. 159A, § 1, does not specify a standard to be applied to an appeal to act as the licensing authority. In the absence of a standard, because the License is a condition of the granting of the CPCN, the Department applies the same standards to the appeal for the License as it applies to the granting of the CPCN. City of Worcester v. Department of Public Utilities, 391 Mass. 1007 (1984).

Pursuant to G.L. c. 159A, § 11A, the operator of a charter service⁴ is required to obtain a Certificate to transport passengers. The Department may issue a Certificate if, after

⁴ A charter service is the exclusive use of a motor vehicle for a trip or a tour carrying ten or more persons, including the driver. G.L. c. 159A, § 11A.

proper notice and a hearing, the Department finds that the petitioner is fit, willing, and able to conform to the requirements of G.L. c. 159A, as well as all laws, rules, and regulations relating to motor carrier safety and the transportation of passengers by motor vehicle upon the public ways of the Commonwealth.

III. COMPANY'S PROPOSAL

Nautical Tours proposes to offer a sightseeing and charter tour service by an amphibious vehicle, known as a Hydra-Terra, that can travel on both land and water. While the amphibious landing craft that are currently being used for sightseeing and tour services in Boston are reconstructed World War II era vehicles referred to as "ducks," the Hydra-Terra is a newly constructed state-of-the art vehicle (Application at app.B.4; Exh. DTE 1-1). The Company states that the Hydra-Terra is rated for travel on open water such as Boston Harbor (id.).⁵

Nautical Tours' proposed route will begin and end in Kendall Square in Cambridge, and will travel through Boston, Cambridge, and Boston Harbor (Exh. DTE 1-1). Each tour will last approximately two hours, with the time divided between an 80-minute land journey and a 40-minute water voyage (id.). Initially, the Company proposes to use two vehicles, each offering four tours daily (id.). The Company's proposed tour season is from April 1st to November 15th of each year (Application at 4). The proposed fares are \$30.00 for adults, \$20.00 for children up to age twelve, \$15.00 for children up to age four and children with

⁵ The Company notes that ducks are not permitted to operate on open water (Exh. DTE 1-1).

special needs, and \$25.00 for students, senior citizens, and members of the disabled community (id. at app.D.3). For groups of at least 25 people, the proposed fares are \$26.00 for adults, \$18.00 for children to age twelve, and \$21.00 for students, senior citizens, and members of the disabled community (id.).

IV. ANALYSIS AND FINDINGS

On July 26, 2006, Nautical Tours filed a request for a License with Cambridge (see Petition at 1). On September 25, 2006, the Cambridge City Council denied the Company's request (see Letter to Department of Telecommunications and Energy from Cambridge City Clerk dated September 27, 2006). On September 29, 2006, Nautical Tours filed a timely appeal of the License denial with the Department pursuant to G.L. c. 159A, § 1.

In determining the appropriateness of granting the Cambridge License, a CPCN for Boston, Cambridge, and DCR public ways, and a Certificate for charter service within the Commonwealth, the Department considers whether the Company is fit, willing, and able to operate the proposed service properly. With respect to granting the Cambridge License and the CPCN for Boston, Cambridge, and DCR public ways, the Department also considers whether the proposed service is in the public interest and whether public convenience and necessity require the proposed service.

The record shows that Nautical Tours has assembled a team of individuals that possess the necessary experience to operate the proposed service (see Affidavit of Peter Beesley; Affidavit of Clarence Jones; Affidavit of Allena Tabb-Harper; Affidavit of Erroll Tyler; Affidavit of Joann Tyler; see also Exh. DTE 1-12). The Company additionally is supported by

a consultant with extensive experience operating a Hydra-Terra amphibious tour service within New England (see Affidavit of Robert Rolando). While the Company, in its business plan, outlines financial requirements and anticipated funding sources, it is unusual for a company to seek a CPCN or License from the Department prior to obtaining funding, purchasing the equipment, and finalizing necessary arrangements (e.g., garaging, maintenance, insurance) (Exhs. DTE 1-16; DTE 1-17). Nonetheless, we accept that it has been difficult for the Company to finalize its financing without having documentation from authorities within the Commonwealth demonstrating that it will be permitted to undertake its operations (see e.g., Exhs. DTE 1-2; DTE 1-13; DTE 2-4). As such, while the Department finds that Nautical Tours is fit and willing to operate the proposed service properly, the Department cannot state with certainty that the Company will be able to operate. Hence, any grant by the Department of a License, CPCN, or Certificate is conditioned on certain criteria. Specifically, each amphibious motor vehicle purchased or leased by Nautical Tours for use within the Commonwealth must pass the Department safety inspection. Nautical Tours also must submit proper proof of insurance to the Department. In addition, the Company must demonstrate that it has secured a garaging site as well as appropriate maintenance personnel and facilities. All of the stated conditions must be met before the Company will be permitted to operate any amphibious vehicle on public ways within the Commonwealth.

In considering whether the proposed service is in the public interest and whether public convenience and necessity require the proposed service, the Department notes that it is not obligated to protect the tour industry against possible competition. See e.g., U.S. Shuttle,

Inc., D.P.U. 96-RB-49 (1996); Boston-Cambridge Trolley Tours, Inc., D.P.U. 90-39 (1990).

In fact, the Department has previously found that competitive markets, in the absence of natural monopolies, tend to reduce costs and consumer prices, and are more sensitive to public demands. See e.g., D.P.U. 96-RB-49; G.L. McGrail Co., D.P.U. 88-226 (1986).

The Company cites increases in domestic travel, specifically increases in tourism in the Boston area, as evidence that its proposed service is required by public convenience and necessity (Exh. DTE 1-16). Further, the record includes public support for the proposed service, including letters describing the contributions the Company will make to Cambridge's economy and the community (Affidavit of Erroll Tyler at 19, 31, Atts. 2, 3). In addition, there was no opposition to Nautical Tours' proposal at the public hearing before the Department. As such, the Department finds that Nautical Tours has demonstrated that its proposed service is in the public interest and is required by public convenience and necessity.

For the reasons outlined above, and with the contingencies as set forth above, the Department finds it appropriate to grant the Cambridge License, the CPCN for Boston, Cambridge, and DCR public ways, and the Certificate.⁶ In granting the Cambridge License, the Department adopts the route as approved by Cambridge's Traffic, Parking and Transportation Department on August 15, 2006 (see Application at app.D.1.A).

⁶ The Company is required to obtain additional authorization directly from Boston for any route that runs through its jurisdiction. See G.L. c. 159A, Appendix. For DCR public ways, Nautical Tours petitioned the Department on May 2, 2007, to act as the licensing authority. This petition, docketed as D.P.U. 07-RB-415, is currently pending.

V. ORDER

Accordingly, after due notice, hearing, and consideration, it is

ORDERED: That the appeal of Nautical Tours, Inc., requesting that the Department act as the licensing authority and issue it a municipal street license for the City of Cambridge pursuant to the provisions of G.L. c. 159A, § 1, is GRANTED subject to the conditions as set forth below; and it is

FURTHER ORDERED: That the petition of Nautical Tours, Inc., requesting that the Department issue it a certificate of public convenience and necessity, pursuant to G.L. c. 159A, § 7, for the operation of a sightseeing service using amphibious motor vehicles for the carriage of passengers for hire over certain public ways in the cities of Boston and Cambridge and ways subject to the jurisdiction of the Department of Conservation and Recreation is GRANTED subject to the conditions as set forth below; and it is

FURTHER ORDERED: That the petition of Nautical Tours, Inc., requesting that the Department issue it a certificate of compliance for charter service within the Commonwealth, pursuant to G.L. c. 159A, § 11A, is GRANTED subject to the conditions as set forth below; and it is

FURTHER ORDERED: That operation under the authority of the above-referenced municipal street license, certificate of public convenience and necessity, and certificate of compliance for charter service requires that each amphibious motor vehicle used by Nautical Tours, Inc., pass the safety inspection of the Department; and it is

FURTHER ORDERED: That no vehicles may be operated under the municipal street license, certificate of public convenience and necessity, and certificate of compliance for charter service until Nautical Tours, Inc., has obtained from the Department, a permit for each vehicle, as required by G.L. c. 159A, § 8, and 220 C.M.R. § 155.02(1); and it is

FURTHER ORDERED: That operation under the authority of the municipal street license, certificate of public convenience and necessity, and certificate of compliance for charter service requires that Nautical Tours, Inc., provide evidence that it has secured a garaging site; and it is

FURTHER ORDERED: That operation under the authority of the municipal street license, certificate of public convenience and necessity, and certificate of compliance for charter service requires that Nautical Tours, Inc., provide evidence that it has secured appropriate maintenance personnel and facilities; and it is

FURTHER ORDERED: That no vehicles may be operated under the municipal street license, certificate of public convenience and necessity, and certificate of compliance for charter service until Nautical Tours, Inc., has filed proper proof of insurance with the Department, as required by 220 C.M.R. § 152.00; and it is

FURTHER ORDERED: That operation under the authority of the certificate of public convenience and necessity is conditioned on receipt by Nautical Tours, Inc., from the Police Commissioner of the City of Boston, the license for the operation of sightseeing in and from the City of Boston, pursuant to the provisions of G.L. c. 159A, Appendix; or a notarized letter from the Police Commissioner of the City of Boston stating that such a license is not required

and a municipal street license from the City of Boston, for those public ways in the City of Boston, pursuant to the provisions of G.L. c. 159A, § 1, if the above referenced sightseeing license is not required; and it is

FURTHER ORDERED: That operation under the authority of the above-referenced certificate of public convenience and necessity is conditioned on receipt by Nautical Tours, Inc., of the municipal street license for those proposed routes under the jurisdiction of the Department of Conservation and Recreation, pursuant to the provisions of G.L. c. 159A, § 1; and it is

FURTHER ORDERED: That the specified route of the sightseeing operation on public ways in the City of Cambridge is:

- Starting at 295 Main Street, leaving eastbound and exiting the City of Cambridge via the Longfellow Bridge.
- Returning northbound into the City of Cambridge via the Harvard Bridge and proceeding to Harvard Square via Massachusetts Avenue. In Harvard Square, turn right from Peabody Street onto Cambridge Street, under the Harvard University overpass, bear right onto Broadway, turn right onto Quincy Street, through to Bow Street, left onto Mount Auburn Street, and continuing on to Massachusetts Avenue eastbound toward Central Square. In Central Square, bear left onto Main Street, left onto Western Connector, left onto Land Boulevard, and exiting the City of Cambridge onto the Gilmore Bridge.
- Re-entering the City of Cambridge southbound from the Gilmore Bridge, continuing onto Land Boulevard, right onto Binney Street, left onto Main Street, and returning to 295 Main Street.

and it is

An appeal as to matters of law from any final decision, order or ruling of the Commission may be taken to the Supreme Judicial Court by an aggrieved party in interest by the filing of a written petition praying that the Order of the Commission be modified or set aside in whole or in part. Such petition for appeal shall be filed with the Secretary of the Commission within twenty days after the date of service of the decision, order or ruling of the Commission, or within such further time as the Commission may allow upon request filed prior to the expiration of the twenty days after the date of service of said decision, order or ruling. Within ten days after such petition has been filed, the appealing party shall enter the appeal in the Supreme Judicial Court sitting in Suffolk County by filing a copy thereof with the Clerk of said Court. G.L. c. 25, § 5.